

REMARKS

Claims 1-19 and 22-34 are pending in this application. In this Response to Office Action, claims 2-4, 6-8, 10-11, 13-14 and 23-34 have been canceled, claims 1, 5, 9, 12, 15-18 and 22 have been amended, and new claims 35-38 have been added. After claims cancellations, amendments and additions herein, claims 1, 5, 9, 12, 15-19, 22 and 35-38 will be pending in this application.

The Examiner has made or maintained the following rejections under 35 U.S.C. § 103(a):

- (a) claims 1-5, 10, 13-19, 22, 24, 28 and 31-34 as being obvious over New Zealand Patent No. 270754 (McFarlane Laboratories) and U.S. Patent No. 6,028,118 (Dupont et al.);
- (b) claims 12, 26, 27, 29 and 30 as being obvious over McFarlane in view of Dupont et al. and further in view of U.S. Patent No. 6,255,295 (Henderson et al.);
- (c) claims 9 and 23 as being obvious over McFarlane in view of Dupont et al. and further in view of Church (Velvet Antler: Its Historical Medical Use);
- (d) claims 7, 8 and 25 as being obvious over McFarlane in view of Dupont et al. and further in view of U.S. Patent No. 5,843,919 (Burger);
- (e) claim 11 as being obvious over McFarlane in view of Dupont et al. and further in view of U.S. Patent No. 4,801,453 (Kosuge et al.); and
- (f) claims 1-2, 6, 15-19 and 22 under 35 U.S.C. § 103(a) as being unpatentable over McFarlane in view of U.S. Patent No. 6,333,304 (Bath et al.).

Applicants' traverse the Examiner's rejections of the claims as being obvious in light of a number of citations. In response, Applicants have herein canceled claims 2-4, 6-8, 10-11, 13-14 and 23-34, have amended claims 1, 5, 9, 12, 15-18 and 22, and have added new claims 35-38. Claims 1, 5, 9, 12, 15-19, 22 and 35-38 now pending in this application are now specific to the Assignee's commercial embodiment of the composition that gives the unexpected and surprising increase in efficacy.

In particular, independent claims 1 and 2 have been amended to refer more specifically to the inventive combination, including the recitation of trace quantities of vitamins and minerals that have been found beneficial by Applicants to the efficacy of the composition. Support for the

amendments may be found in at least Example 7 of the specification, which describes the now claimed combination including use of trace quantities of vitamins and minerals. Claim 5 has been made dependent on claim 1 and, no longer containing a reference to shark cartilage, now specifies the source of bark product or extract in claim 1. In order to conform the dependent claims to these amendments, claim dependencies in claims 9, 12, 15, 16-19, 22 and 34 have been changed.

In addition, new claim 35 has been added referring to the depot effect noted for the composition, as described on page 18, lines 20-24 of the specification. New claim 36 has been added referring to the tablet composition dosage rate, as described in Example 7 of the specification. New claim 37, dependent on new claim 36, describes a preferred quantity of deer velvet in accordance with that described in at least Example 5a of the specification.

The invention as claimed in the amended claim set relates to the surprisingly enhanced therapeutic effects obtained from the claimed composition over therapeutic effects expected from the individual components alone. In fact, recent trials and studies completed by the Applicant have again shown that the improved effect, which is noted in examples described within the specification, are indeed correct. The data regarding the recent trials and studies is set forth and analyzed in the Declaration of Sabina A. Holle Under 37 C.F.R. § 1.132 that is being submitted herewith. As shown in this declaration, substantially improved joint health is noted from administration of the claimed composition. In fact, according to Dr. Holle, the trial information set forth in the declaration backs up data in the patent specification that the combination of agents used in the claimed composition shows a positive effect in lameness (possibly due to a decrease in inflammation) and increased joint mobility of dogs.

With respect to the Examiner's rejection of claims 1-5, 10, 13-19, 22, 24, 28 and 31-34 as being obvious over McFarlane et al. in view of Dupont et al., Applicants point out to the Examiner that, although McFarlane purports to describe a composition containing GLME and fish oil having a synergistic effect and Dupont purports to describe a method of treating arthritis by administration of shark cartilage extract, neither reference teaches the inclusion of a bark product or extract and use of vitamins and minerals. In fact, McFarlane teaches away from the

combination of amended claim 1 by describing the need to include fish oil in order to achieve a synergistic effect, and neither reference teaches or even suggests an enhanced effect from treatment by the claimed compound which does not include fish oil. Accordingly, Applicants submit that amended independent claims 1 and 22 as well as their dependent claims, are not obvious in light of these references, even with the addition of the other references cited by the Examiner.

With respect to the Examiner's rejection of claims 12, 26, 27, 29 and 30 (Applicants note that 26, 27, 29 and 30 have been canceled herein) over McFarlane et al. in view of Dupont et al. and further in view of Henderson et al., Henderson et al. describe compositions for the treatment of arthritis and related symptoms, such as chondroitin sulphate and glucosamine. Vitamins B12, B6, folic acid, dimethylglycine, trimethylglycine are also taught as being added to enhance the function of S-adenosymethione. Applicants noted above that neither McFarlane et al. nor Dupont et al. teach inclusion of vitamins and minerals, and Henderson et al. also do not describe use of bark products or extracts or the use of minerals or the surprising and enhanced effect of the claimed combination. Accordingly, claim 12 as amended is patentable.

With respect to the Examiner's rejection of claims 1-2, 6, 15-19 and 22 over McFarlane et al. in view of Bath et al., Applicants note that Bath et al. describe treatments for arthritis which include use of pine bark extract. However, the combination of McFarlane et al. and Bath et al. does not describe the composition of amended claim 1, as the inclusion of shark cartilage and of vitamins and minerals is not described, nor would it be obvious from McFarlane and Bath to include these components. Further, the enhanced effect noted from the claimed composition is not described or suggested by McFarlane et al. and Bath et al. McFarlane et al., as stated above, teaches away from the combination of amended claim 1 by describing the need for fish oil in order to achieve a synergistic effect. It is, therefore, submitted that amended independent claims 1 and 22, as well as their dependent claims, are patentable over McFarlane et al. and Bath et al.

Accordingly, Applicants respectfully request that, in view of the arguments propounded above and the Declaration of Sabina A. Holle Under 37 C.F.R. § 1.132 that is being submitted

herewith, the Examiner withdraw his rejections of claims 1, 5, 9, 12, 15-19 and 22 as applied above and pass claims 1, 5, 9, 12, 15-19 and 22 as well as new claims 35-38 to allowance.

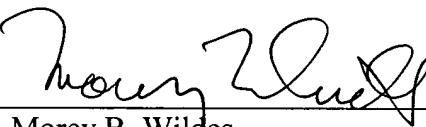
Conclusion

Reconsideration of the present application, as amended, is requested. Applicants respectfully submit that all the claims pending in this application are patentable. According to currently recommended U.S. Patent and Trademark Office policy, the Examiner is specifically authorized to contact the undersigned in the event that a telephone interview would advance the prosecution of the case.

An early and favorable action on the merits is earnestly solicited.

Respectfully Submitted,
DAVIDSON, DAVIDSON & KAPPEL, LLC

By:


Morey B. Wildes
Reg. No. 36,968

Davidson, Davidson & Kappel, LLC
485 Seventh Avenue, 14th Floor
New York, NY 10018
(212) 736-1940